COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS APPEALS COURT

DOCKET NO. ~~15-P-1637~~ 16-P-39

COMMONWEALTH

v.

CHRIST O. LYS, APPELLANT

APPEAL OF DENIAL OF MOTION FOR NEW TRIAL BY THE MARLBOROUGH DISTRICT COURT

BRIEF OF APPELLANT

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2. Whether the motion judge applied the correct standard regarding substantial grounds of defense available to the Defendant.
3. Whether a better plea would have been available to Defendant had trial counsel effectively assisted Defendant.

Statement of the Case

This is an appeal of the denial of a motion for new trial based on trial counsel's failure to advise the defendant of the full immigration consequences of his plea. The Defendant (now Appellant), Mr. Christ

Lys, was charged with 28 counts involving multiple charges of Distribution of Class D, Drug Violation Near School/Park, Possession of Class B, Distribution of Cocaine, Conspiracy, and Attempt to Commit Crime. On January 19, 2012, Defendant was arraigned in the Marlborough District Court. *See* App. 1. On October 30, 2012, Defendant pled guilty to 3 counts of Distribution of Class D, 2 counts of Distribution of Cocaine, 2 counts of Conspiracy, and 15 counts of Attempt to Commit a Crime. Defendant was sentenced to 18 months in the House of Corrections and probation until October 30, 2014. *See* App. 4-13. Defendant was not advised that his plea would carry immigration consequences of automatic deportation. *See* App. 17.

On February 21, 2013, Defendant was placed in immigration removal proceedings. On February 19, 2014, Defendant filed a *pro se* motion for new trial under Mass. R. Crim. P. 30(b). App. *See* App. 14-15. On May 19, 2015, Defendant's newly retained *pro bono* counsel filed a supplemental motion for new trial accompanied with a supplemental affidavit of Defendant. *See* App. 18-22. On June 15, 2015, the judge denied his motion for new trial. *See* App. 23-24. The judge found that Defendant had established that he had not received

immigration advice from his trial counsel, but that Defendant had not established a substantial grounds of defense or possibility of a "better" plea. *See* App. 24.

Defendant Mr. Christ Lys is a 24-year-old Lawful Permanent Resident with no immigration-relevant criminal history prior to accepting the plea at issue. *See* Tr. 06/08/15 - 5. His trial counsel, Cornelius Dailey, declined to cooperate with Defendant or his motion counsel in either providing an affidavit or appearing at the motion hearing. *See* Tr. at 06/08/15 - 6. In his uncontested affidavit, Mr. Lys states that he was never advised that his plea would be an "aggravated felony" for immigration purposes and would subject him to mandatory deportation. *See* App. 16-17.

In making his plea without having the benefit of advice regarding automatic deportation, Mr. Lys sacrificed viable defenses, the opportunity to make a better plea bargain, and his Constitutional right to take his case to trial and require the Commonwealth to shoulder the burden of proof. Trial counsel left many defense strategies unexplored. For example, there is no evidence that trial counsel sought independent testing of the alleged controlled substances or

attempted to determine whether the amount in question of the alleged marijuana was enough to trigger criminal liability if a jury found that any distribution intended was only social sharing without remuneration. See Tr. at 06/08/15 - 11; App. 1-3 (no evidence of motions for funds).

In addition, Mr. Lys demonstrated numerous special circumstances such that he would have insisted on going to trial regardless of the risks, including his lack of ties to Haiti, which he left when he was only 7 years old and to which he has never returned. Defendant's father, sister, and friends all live in the United States, and his mother and brother who lived in Haiti disappeared during the 2010 Haiti earthquake. His poor ties to the Haiti include limited fluency in French and Creole because he has spoken English for almost his entire life. See App. 20-22.

Further, Mr. Lys has multiple medical issues and understands he will not be able to have adequate medical treatment in Haiti. He has been diagnosed with a learning disability, PTSD, and ADHD. He was sexually abused by a family member when he was young, suffered physical abuse and neglect by his father, and was

forcibly turned out of his home by his father when he was only 18. *See* App. 20-22.

Argument

I. DEFENDANT'S CIRCUMSTANCES AS A NON-CITIZEN FROM HAITI WOULD HAVE DRIVEN HIM A REASONABLE PERSON TO GO TO TRIAL RATHER THAN ACCEPT A PLEA WITH THE IMMIGRATION CONSEQUENCE OF AUTOMATIC AND INEVITABLE DEPORTATION.

A. The Lower Court Applied The Incorrect Rule Of Law.

The lower court applied the incorrect rule of law in holding that there was no "presence of special circumstances that he would have placed any more emphasis on the immigration consequences in deciding whether or not to enter the pleas that he did" since there was absolutely no basis for his conclusion. App. 23-24 (Lower Court Decision). In a footnote in *Commonwealth v. Lavrinenko*, the Supreme Judicial Court focused on another motion judge's error of law, noting:

> The judge also appeared to err in finding no prejudice because the defendant "was more than satisfied" with the plea bargain "at that time." The question is not whether the defendant was satisfied with the plea bargain at the time, having received inadequate advice about the immigration consequences of a conviction, but **whether there is a reasonable probability that, in**

> **the absence of counsel's errors, a reasonable person in the defendant's position would have chosen to go to trial** on the assault by means of a dangerous weapon charge rather than accept the plea offer. See Commonwealth v. DeJesus, 468 Mass. 174, 184 (2014) (rejecting Commonwealth's argument that defendant was not prejudiced because he "got a very good deal" in receiving "straight probation when he was facing a mandatory minimum sentence of five years of incarceration").

473 Mass. 42, 61 n.22 (2015) (emphasis added). In that passage, the SJC clearly asserts that the standard is not what the Defendant's thoughts were on whether or not he would accept the plea, but "whether there is a reasonable probability that, in absence of counsel's errors, that a reasonable person in defendant's position would have chosen to go to trial." Further, the SJC states in another footnote:

> "[A] judge does not evaluate the credibility of the defendant's assertion that he or she would have gone to trial had the defendant known then what the defendant knows now. Rather, a judge must evaluate that assertion under a reasonable person standard, because a judge cannot evaluate whether the defendant is telling the truth about a decision the defendant never made."

Id. at 55 n.16.

Here, the motion judge indicates that he attempted to determine whether or not Defendant would have made the choice he did, and the decision does not

indicate that he applied a reasonable person standard. As such, the motion judge either did not apply any standard of law or applied the incorrect standard since he did not conduct any analysis under the reasonable person standard.

B. Defendant Would Have Acted as a Reasonable Person in Rejecting a Plea Offer in Order to Avoid Mandatory and Automatic Deportation.

As a non-citizen, Defendant would not have accepted a plea that subjected him to automatic deportation to his impoverished birth country, Haiti, and Defendant would have insisted on going to trial even with a slim chance of acquittal at trial. The U.S. Supreme Court and the Massachusetts Supreme Judicial Court have both affirmed that Defendant would be acting as a reasonable person as a non-citizen with strong ties to the U.S. if he were to reject a plea offer with the consequence of inevitable deportation. The Supreme Judicial Court's recent decision in *Lavrinenko* supports a grant of Defendant's motion for new trial in light of his desperate determination to avoid removal to Haiti. *See Commonwealth v. Lavrinenko*, 473 Mass. 42(2015).

In *Lavrinenko*, the Supreme Judicial Court held that courts must give "'special circumstances' regarding immigration consequences . . . substantial weight in determining, based on the totality of the circumstances, whether there is a reasonable probability that the defendant would have rejected the plea offer and insisted on going to trial had counsel provided competent advice regarding the immigration consequences of the guilty plea." *Id.* at 43. The Court found that there was "nothing in the judge's findings and order on the defendant's motion for a new trial or for reconsideration that suggests that he considered the defendant's refugee status in finding the absence of prejudice" and decided that "[t]he failure to consider this special circumstance is an error of law that requires that the judge's denial of the motion for a new trial and the motions for reconsideration be vacated and the matter remanded." *Id.* at 60-61. In its review of special circumstances that might affect prejudice to a non-citizen, the Court referred to its earlier decision of *Commonwealth v. DeJesus* where it determined that a defendant had established special circumstances when he was a Lawful Permanent Resident (LPR) who "had a lot to lose if he were to be

deported," considering that "he had been in the country since he was eleven years old, his family was in Boston, and he had maintained steady employment in the Boston area." *Commonwealth v. DeJesus*, 468 Mass. 174, 176, 183-84 (2014).

Further, the Court in *Lavrinenko* contemplated another error of the lower court in its irrelevant consideration of the defendant's satisfaction in his plea. The Court elucidated on the error in a footnote:

> The judge also appeared to err in finding no prejudice because the defendant 'was more than satisfied' with the plea bargain 'at that time.' The question is not whether the defendant was satisfied with the plea bargain at the time, having received inadequate advice about the immigration consequences of a conviction, but whether there is a reasonable probability that, in the absence of counsel's errors, a reasonable person in the defendant's position would have chosen to go to trial . . . rather than accept the plea offer. See Commonwealth v. DeJesus, 468 Mass. 174, 184 (2014) (rejecting Commonwealth's argument that defendant was not prejudiced because he 'got a very good deal' in receiving 'straight probation when he was facing a mandatory minimum sentence of five years of incarceration'").

Lavrinenko, 473 Mass. at 61 n.22.

Here, Defendant Mr. Lys clearly established special circumstances that would have led him to refuse a plea bargain that carried immigration

consequences. Mr. Lys's prior criminal history carried absolutely no immigration consequences, and he would be altogether safe from removal if not for his single poorly advised guilty plea on October 30, 2012. *See* Tr. at 06/08/15 - 21 (indicating that Mr. Lys will be able to reopen and vacate the Immigration Court's order of removal if this conviction were vacated). Thus, Mr. Lys had everything to lose by accepting a plea with the immigration consequence of mandatory removal.

In his supplemental affidavit, Defendant averred that he came to the U.S. from Haiti as a Lawful Permanent Resident when he was seven years old, attended school in the U.S., speaks English, and has a community of friends and desire to make a life in the United States. He further stated that he has no family in Haiti, having lost touch with his mother and younger brother in Haiti's 2010 earthquake. Defendant has limited fluency in French and Creole, the primary languages in Haiti. *See* App. 20-22. Many of Defendant's close friends were in attendance at the hearing for his Motion for New Trial to show support for him. *See* Tr. at 06/08/15 - 13.

Defendant also raised his medical history in connection with his concerns surrounding deportation to Haiti. Defendant suffers from a learning disability, Post-Traumatic Stress Disorder (PTSD), and Attention-Deficit Hyperactivity Disorder (ADHD). Some of Defendant's medical issues stem from sexual abuse by a family member when he was young and physical abuse by his father (also a Lawful Permanent Resident) who beat him. Defendant lived in foster homes from the time he was 14 years old until he turned 17, and he recognizes that he can only be adequately treated for PTSD and ADHD in the United States. *See* App. 20-22.

Further, Defendant's counsel argued at his hearing that Defendant's attitude to his immigration proceedings demonstrated his determination to avoid removal at all costs. Defendant has been challenging his removal since immigration proceedings were initiated on February 21, 2013, and he has been held in custody by the U.S. Immigration and Customs Enforcement (ICE) for two-and-a-half years to date. *See* App. 16-17 (Affidavit of Defendant). Criminal and immigration custody combined, Defendant has been confined for nearly three-and-a-half years, over

triple the time he served for his conviction in this case.

Defendant's lengthy history in the U.S. and ties to his community in the Massachusetts area makes him similar to the defendant in *DeJesus* who established special circumstances through his immigration to the U.S. as an eleven-year-old child who made a life and home here through work and family ties. *See DeJesus*, 468 Mass. at 183-84. Defendant has no ties to Haiti as his father, sister, and friends live here in the United States, and his few family members in Haiti were lost to him in the 2010 earthquake. *See* Tr. at 06/08/15 - 12. Moreover, Defendant no longer speaks Haitian Creole or French, the primary languages of Haiti, because he has spoken only English since arriving in the United States at the age of 7. *See id.* Defendant has demonstrated his absolute insistence on staying in the U.S. by consistently contesting his deportation over the course of nearly 3 years. *See* App. 16-17 (Affidavit of Defendant). Defendant's decision to stay in immigration detention at the Suffolk County House of Correction rather than be deported to Haiti where he would be free from confinement speaks volumes of his absolute and

unwavering commitment to avoiding deportation to Haiti. *See id.*

Furthermore, plea counsel stated during the colloquy on October 30, 2012, that Defendant was "trying . . . to produce a better life for himself." Tr. at 10/30/12 - 17. It is hard to contemplate how deportation to Haiti would have been reasonably calculated to improve Defendant's life, considering that Haiti had recently suffered an earthquake and deadly cholera epidemic. *See* Human Rights Watch, *World Report 2014: Haiti*, https://www.hrw.org/world-report/2014/country-chapters/haiti (last accessed on Feb. 22, 2016).

In light of the foregoing factors, it is unquestionable that Defendant would have acted as a reasonable person in refusing a plea offer that carried the automatic consequence of deportation. To argue that Defendant would have accepted the plea offer is to say that he was comfortable with removal from the United States, and there is absolutely no evidence that Defendant was ever willing to be deported from the U.S. which he considers his home country. It is unclear why the lower court could find that there was no presence of special circumstances

that would have caused Defendant to reject a plea offer, considering his strong ties to his community in the U.S., lack of ties to Haiti, inability to speak the languages of Haiti, his determination to "do better" in the U.S., and his medical needs.

Because of his strong ties to the United States, medical needs, and the dire nature of deportation to impoverished Haiti, Defendant has special circumstances that would have caused him to choose to go to trial, satisfying the Supreme Judicial Court's requirement in *Lavrinenko* and *Clarke* for a showing of special circumstances in order to obtain a grant for a motion for new trial. *See Lavrinenko; Commonwealth v. Clarke*, 460 Mass. 30 (2011). The motion judge clearly erred in asserting that Defendant lacked special circumstances that would have led Defendant to go to trial and omitted any explanation of that conclusory statement. See App. 23-24 (Lower Court Decision). As such, this case must be remanded due to the lower court's errors of law and fact, and the lower court must determine and provide cogent analysis of whether or not Defendant established special circumstances that would have caused him to reject a plea offer with

the inevitable consequence of automatic deportation and instead go to trial.

II. THE COURT APPLIED THE INCORRECT AND OUTDATED STANDARD REGARDING SUBSTANTIAL GROUNDS OF DEFENSE. FURTHERMORE, EVEN UNDER THE PREVIOUS STANDARD, SUBSTANTIAL DEFENSES WERE AVAILABLE TO DEFENDANT BECAUSE TRIAL COUNSEL FILED NO MOTIONS, CONDUCTED NO DISCOVERY, FAILED TO FILE A CERTIFICATE OF COMPLIANCE REGARDING DISCOVERY, FAILED TO PREPARE FOR TRIAL, AND ADVISED DEFENDANT TO WAIVE HIS RIGHT TO JURY AND OTHER CONSTITUTIONAL RIGHTS.

The lower court clearly erred by applying incorrect and outdated law in stating that Defendant had no substantial grounds of defense. As emphasized in the Supreme Judicial Court's *Lavrinenko* decision,

> "To show that a 'substantial defense' was available, the defendant **need not** show that it was more likely than not that such a defense would have resulted in acquittal. *See United States v. Orocio*, 645 F.3d 630, 643 (3rd Cir. 2011), abrogated on other grounds by *Chaidez v. United States*, 133 S. Ct. 1103 (2013) ("**The Supreme Court . . . requires only that a defendant could have rationally gone to trial in the first place**, and it has never required an affirmative demonstration of likely acquittal at such a trial as the sine qua non of prejudice.")"

Commonwealth v. Lavrinenko, 473 Mass. at 57 n.19 (emphasis added). The *Orocio* decision relied on by the Supreme Judicial Court further elaborates:

> [T]he Supreme Court's intervening decision in Padilla (of which the District Court did

> not have the benefit) has made it clear that [a showing of likelihood of acquittal] is not appropriate. Instead, "to obtain relief on this type of claim, a petitioner must convince the court that **a decision to reject the plea bargain would have been rational under the circumstances**," *Padilla*, 130 S.Ct. at 1485, and a rational decision not to plead guilty does not focus solely on whether a defendant would have been found guilty at trial – *Padilla* reiterated that an alien defendant might rationally be more concerned with removal than with a term of imprisonment, see id. at 1483 (recognizing that "'[p]reserving a client's right to remain in the United States may be more important to the client than any potential jail sentence'" (quoting *St. Cyr*, 533 U.S. at 323, 121 S.Ct. 2271)). **Therefore, [the] requirement that a defendant affirmatively show that he would been acquitted in order to establish prejudice in this context is no longer good law.**

Orocio, 645 F.3d at 643-44 (emphasis added). Thus, it is improper to assert, as the lower court did, that, "[T]he Defendant needed to demonstrate to the Court that he had available to him a substantial ground of defense that he would have pursued if he had been correctly advised of the dire immigration consequences of accepting the plea bargain." *See* App. 23-24 (Lower Court Decision).

As set forth by the Supreme Judicial Court in *Lavrinenko*, the correct standard the court should have applied in a motion for new trial is whether the "defendant could have rationally gone to trial."

Lavrinenko, 473 Mass. at 57 n.19. As described above, Defendant established special circumstances that would have caused him to avoid deportation to Haiti at all costs, including rejection of a plea offer that carried the consequence of mandatory deportation. Defendant has strong ties to the United States having immigrated here with his father and sister at the age of 7 and has never returned to Haiti. Defendant's mother and brother, his last remaining family members in Haiti, were lost to him in the 2010 earthquake. Defendant has a strong community of friends here in the U.S., wishes to attend college in the United States and become a mechanic, and has medical needs that can only be properly treated in the United States. *See* Tr. at 06/08/15-12 to 06/08/15-13.

In light of the foregoing, it was rational for Defendant to do all he could to avoid deportation, including rejecting a plea offer that would result in mandatory removal and opt instead for trial which would at least permit the possibility of avoiding removal from the United States. The corollary is that it would have been completely irrational for Defendant to accept a plea offer with the *guarantee* of deportation when he had even the slightest opportunity

to avoid deportation by going to trial. It is clear from Defendant's going-on-four years of confinement that Defendant would not, and does not, fear a lengthy period of incarceration, so the oft-cited factor of lengthy incarceration as a disincentive to trial cannot apply to Defendant.

But even under the outdated standard pertaining to substantial grounds of defense, Defendant still prevails because of the opportunities to attack the Massachusetts crime lab results and the uncertainty in jury determinations. In *Commonwealth v. Chleikh*, 82 Mass. App. Ct. 718 (2012), the Massachusetts Appeals Court found that the defendant had not established a substantial ground of defense when he only averred his co-defendant was also arrested for assaulting the victim but he was found alone in the apartment with the victim and with blood on his hands. *See Chleikh*, 82 Mass. App. Ct. at 726-27.

The instant case differs widely from *Chleikh* because Defendant has averred that his trial counsel made no effort to explore the facts and possible defenses in the case. *See* Tr. at 06/08/15 at 11. Absent from the court file are any pre-trial motions and a Pre-Trial Conference Report to attest to the

status of discovery pursuant to Mass. R. Crim. P. 11(a)(2)(A). With regard to counsel's file, it is apparent counsel made no attempt to discover the identity of the CI, acquire his history, or discover offers to the CI to investigate and testify on behalf of the Commonwealth. *See* Tr. 06/08/15 - 11.

Defendant was, and is, indigent, and there is also evidence in the Docket that his trial counsel, a bar advocate for the Committee for Public Counsel Services (CPCS), made no attempts to seek funds for independent testing of the alleged controlled substances. *See* App. 1-3 (Court Docket). In light of the recent events regarding the Massachusetts crime labs such as the Annie Dookhan scandal, it is ever more imperative that defense counsel question the drug test results proffered by the Commonwealth and the credentials of the testing chemist. *See* Jess Bidgood, "Massachusetts Judges Clear Way for New Trials in Cases Chemist May Have Tainted," *New York Times* (May 18, 2015), http://www.nytimes.com/2015/05/19/us/annie-dookhan-defendants-mass-supreme-court.html?_r=0 (last accessed Feb. 22, 2016) (describing Mass. chemist Annie Dookhan's fabrication of positive drug test results); Henry Gass, "Widening scandal at state drug

lab in Mass. exposes opportunities for reform," *The Christian Science Monitor* (July 17, 2015), http://www.csmonitor.com/USA/Justice/2015/0717/Widening-scandal-at-state-drug-lab-in-Mass.-exposes-opportunities-for-reform (last accessed Feb. 22, 2016) (describing Mass. chemist Sonja Farak's tampering with evidence and stealing drugs from workplace); The Associated Press, "Mass. Fires Chemist Over Academic Credentials," *90.9 WBUR* (Nov. 26, 2013), http://www.wbur.org/2013/11/26/mass-chemist-academic-credentials (last accessed Feb. 22, 2016) (describing Mass. chemist Kate Corbett's falsification of academic credentials and subsequent termination).

Furthermore, the high-profile nature of these Massachusetts crime lab scandals may have affected a jury's decisions regarding the weight and veracity of the crime lab results if Defendant had taken his case to trial, providing him a substantial ground of defense. It is impossible to know what conclusions the jury, finders of fact, would have drawn had the case gone to trial. The uncertainty regarding potential jury decisions has been recognized by the United States Supreme Court: "[I]t is common experience that different juries may reach different results under any

criminal statute. That is one of the consequences we accept under our jury system." *Roth v. United States*, 354 U.S. 476, 492 n.30 (1957); *Miller v. California*, 413 U.S. 15, 26 n.9 (1973).

By pleading to resolve his case, Defendant lost substantial grounds of defense in the form of effective trial strategies that his counsel could have explored for this drug case during a time when Massachusetts crime labs were plagued with scandals.

III. IF TRIAL COUNSEL HAD EFFECTIVELY ASSISTED DEFENDANT, A BETTER PLEA OFFER MAY HAVE BEEN AVAILABLE TO DEFENDANT.

The plea that Defendant entered on October 30, 2012, carried the consequence of inevitable and mandatory deportation, but various pleas and sentences were available to Defendant in order to avoid automatic removal from the United States, and trial counsel failed to effectively assist Defendant in exploring these options. The only one of Defendant's charges that resulted in automatic deportation is Distribution of Cocaine, a violation of Mass. Gen. Laws c. 94C § 32A(c). See App. 4-13 (Criminal Docket - Offenses); 8 U.S.C. § 1227(a)(2)(A)(iii) (creating the "aggravated felony" ground of removal); 8 U.S.C. §

1101(a)(43)(B) (defining illicit trafficking in a controlled substance to be an "aggravated felony"); *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1682 (2013) (Federal statute "prohibits the Attorney General [of the United States] from granting discretionary relief from removal to an aggravated felon, no matter how compelling his case"). While the other charges relating controlled substances would have caused him to be removable, convictions on those charges would not have resulted in mandatory removal. *See* 8 U.S.C. § 1227(a)(2)(B)(i) (creating a ground of removability pursuant to violation of the Controlled Substances Act); 8 U.S.C. § 1229b(a)(3) (allowing for a Lawful Permanent Resident in removal proceedings to apply for cancellation of removal if he/she has not been convicted of an aggravated felony).

Plea counsel could have creatively bargained for a resolution without dire immigration consequences. *See Padilla*, 130 S.Ct. 1473, 1486 ("Counsel who possess the most rudimentary understanding of the deportation consequences of a particular criminal offense may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation, as

by avoiding a conviction for an offense that automatically triggers the removal consequence.") For example, the Massachusetts "guilty filed" disposition is not a conviction for immigration purposes and could have been a potential resolution for the Distribution of Cocaine charges. *See Griffiths v. INS*, 243 F.3d 45 (1st Cir. 2001). But there is no evidence that plea counsel considered immigration consequences to Defendant, let alone attempted to creatively bargain for a plea that mitigated mandatory removal of Defendant. It is apparent that plea counsel had no understanding of immigration consequences or attempted to mitigate immigration consequences when Defendant's plea deal included an entry of *nolle prosequi* on 4 counts of Drug Violation Near School/Park, presumably to avoid the two-year mandatory sentence, which would not have carried the consequence of automatic removal as a School Zone Violation is not an aggravated felony. *See* App. 58 U.S.C. § 1229b(a)(3) (allowing for a Lawful Permanent Resident in removal proceedings to apply for cancellation of removal if he/she has not been convicted of an aggravated felony).

Plea counsel again demonstrates his inability to understand his client's interests in avoiding

immigration consequences by his apparent negotiation to dismiss 2 counts of Possession of Class B which would not have caused automatic deportation because simple possession is not an aggravated felony. *See* App. 6; 8 U.S.C. § 8 U.S.C. § 1229b(a)(3) (allowing for a Lawful Permanent Resident in removal proceedings to apply for cancellation of removal if he/she has not been convicted of an aggravated felony).

Contrary to the Commonwealth's assertion that Defendant "received a shorter sentence than he would have otherwise received . . . if he went to trial," implying that he would have accepted the sentence purely due to the shorter sentence, the length of Defendant's sentences were <u>immaterial</u> and <u>unrelated</u> to immigration consequences, showing that the Commonwealth has no meaningful understanding of immigration consequences. Tr. at 06/08/15 - 30. The length of the sentence <u>does not matter</u> in drug convictions for immigration purposes, and Defendant would have acted as a Reasonable Person in avoiding automatic removal by refusing a shorter sentence with automatic removal in favor of a longer sentence without the consequence of automatic removal. Already, Defendant has been confined for twice the 18-month

sentence he agreed to, which shows that he is not deterred by length of confinement compared to mandatory deportation. The Supreme Judicial Court has specifically rejected the Commonwealth's ridiculous and disingenuous argument that a defendant is "not prejudiced" "notwithstanding [the Defendant's] circumstances [of strong ties to the United States] because he 'got a very good deal'" in receiving "straight probation when he was facing a mandatory minimum sentence of five years of incarceration." *Commonwealth v. DeJesus*, 468 Mass. at 184. Unlike the Commonwealth in this instant case and in *DeJesus*, the SJC recognizes that length of sentence is not necessarily a non-citizen's highest priority when it comes to sentencing, considering the much weightier consequence of automatic deportation.

Furthermore, the United States Supreme Court has held that, "[i]f an assessment of the apparent benefits of a plea offer is made, it must be conducted in light of the recognition that a noncitizen defendant confronts a very different calculus than that confronting a United States citizen. For a noncitizen defendant, preserving his 'right to remain in the United States may be more important to [him]

than any jail sentence.' *Padilla*, [559 U.S.] at 368." Here, the lower court decision evidences no consideration of this "very different calculus" though Defendant and his motion counsel set forth a litany of reasons why he is desperate to preserve his right to remain in the United States. *See* App. 25. The lower court's decision is astonishingly reductive, abbreviated, and conclusory regarding Defendant's calculus of the benefits of a plea offer. The decision simply states, "[T]he court does not find the presence of any special circumstances that he would have placed any more emphasis on the immigration consequences in deciding whether or not to enter the pleas that he did," without any explanation whatsoever as to why the lower court chose to make that statement.

Thus, not only would trial counsel have had the opportunity to negotiate a better plea that mitigated immigration consequences for Defendant, and contrary to the assertions of the Commonwealth and the lower court, a "better" plea in light of Defendant's status as a noncitizen was indeed a possibility left both unconsidered and undiscussed. As reiterated time and time again by both the Massachusetts Supreme Judicial Court and the United States Supreme Court, the

Commonwealth's focus on Defendant's sentence length was and is not the relevant issue or consideration for a noncitizen like Defendant. Trial counsel was ineffective in failing to recognize and advise Defendant of immigration consequences and failing to negotiate differently on the counts of Distribution of Cocaine.

Conclusion

For the foregoing reasons, Mr. Lys respectfully requests that this Court vacate the order denying his motion, vacate his conviction, remand the case to the district court for a new trial, and order any other relief that this Court deems just and proper.

Respectfully submitted,

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Certificate of Compliance

I, Hillary S. Cheng, hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. A. P. 16(e) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. 18 (appendix to the briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).

Hillary S. Cheng

Certificate of Filing

I, Hillary S. Cheng, hereby certify under penalty of perjury that on February 22, 2016, I filed seven copies of this Brief, and the accompanying Addendum and Appendix, on the Massachusetts Appeals Court by first-class mail to the John Adams Courthouse, 1 Pemberton Square #1200, Boston, MA 02108.

Hillary S. Cheng

Certificate of Service

I, Hillary S. Cheng, hereby certify under penalty of perjury that on February 22, 2016, I served two copies of this Brief, and the accompanying Addendum and Appendix, on the Middlesex District Attorney Appeals Unit by first-class mail to the Office of the District Attorney, 15 Commonwealth Avenue, Woburn, MA 01801.

Hillary S. Cheng

COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS APPEALS COURT

DOCKET NO. 15-P-1637

COMMONWEALTH

v.

CHRIST O. LYS, APPELLANT

APPEAL OF DENIAL OF MOTION FOR NEW TRIAL BY THE MARLBOROUGH DISTRICT COURT

ADDENDUM OF APPELLANT

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(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means—

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 802 of title 21), including a drug trafficking crime (as defined in section 924(c) of title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

(E) an offense described in—

(i) section 842(h) or (i) of title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of title 18 (relating to firearms offenses); or

(iii) section 5861 of title 26 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at[5] least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at[5] least one year;

(H) an offense described in section 875, 876, 877, or 1202 of title 18 (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of title 18 (relating to child pornography);

[5]So in original. Probably should be preceded by "is".

(J) an offense described in section 1962 of title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18;

(ii) section 421 of title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) section 421 of title 50 (relating to protecting the identity of undercover agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter[6]

(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily—

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily—

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney

[6] So in original. Probably should be followed by a semicolon.

General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term "extraordinary ability" means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction.

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of—

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(50) The term "intended spouse" means any alien who meets the criteria set forth in section 1154(a)(1)(A)(iii)(II)(aa)(BB), 1154(a)(1)(B)(ii)(II)(aa)(BB), or 1229b(b)(2)(A)(i)(III) of this title.

(51) The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under—

(A) clause (iii), (iv), or (vii) of section 1154(a)(1)(A) of this title;

(B) clause (ii) or (iii) of section 1154(a)(1)(B) of this title;

(C) section 1186a(c)(4)(C) of this title;

(D) the first section of Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208).

(52) The term "accredited language training program" means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(b) As used in subchapters I and II—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adop-

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) Waiver authorized for certain misrepresentations

The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 1182(a)(6)(C)(i) of this title, whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who—

(i)(I) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 1182(a) of this title which were a direct result of that fraud or misrepresentation.

(ii) is a VAWA self-petitioner.

A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

(2) Criminal offenses

(A) General crimes

(i) Crimes of moral turpitude

Any alien who—

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed,

is deportable.

(ii) Multiple criminal convictions

Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) Aggravated felony

Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) High speed flight

Any alien who is convicted of a violation of section 758 of title 18 (relating to high speed flight from an immigration checkpoint) is deportable.

(v) Failure to register as a sex offender

Any alien who is convicted under section 2250 of title 18 is deportable.

(vi) Waiver authorized

Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances

(i) Conviction

Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) Drug abusers and addicts

Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses

Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18) in violation of any law is deportable.

(D) Miscellaneous crimes

Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate—

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18 for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 1185 or 1328 of this title,

is deportable.

(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and

(i) Domestic violence, stalking, and child abuse

Any alien who at any time after admission is convicted of a crime of domestic

Responsibility Act of 1996 (8 U.S.C. 1229–1229c) [Pub. L. 104–208]."

EFFECTIVE DATE

Section effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

Subsec. (c)(3)(B), (C) of this section applicable to proving convictions entered before, on, or after Sept. 30, 1996, see section 322(c) of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

ELIMINATION OF TIME LIMITATIONS ON MOTIONS TO REOPEN DEPORTATION PROCEEDINGS FOR VICTIMS OF DOMESTIC VIOLENCE

Pub. L. 106–386, div. B, title V, §1506(c)(2), Oct. 28, 2000, 114 Stat. 1528, as amended by Pub. L. 109–162, title VIII, §§814(a), 825(b), Jan. 5, 2006, 119 Stat. 3058, 3064, provided that:

"(A)(1) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen or rescind deportation proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208] (8 U.S.C. 1101 note))—

"(I) there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3) of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1252b(c)(3)) does not apply—

"(aa) if the basis of the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1254(a)(3)); and

"(bb) if the motion is accompanied by a suspension of deportation application to be filed with the Secretary of Homeland Security or by a copy of the self-petition that will be filed with the Department of Homeland Security upon the granting of the motion to reopen; and

"(II) any such limitation shall not apply so as to prevent the filing of one motion to reopen described in section 240(c)(7)(C)(iv) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(7)).

"(ii) PRIMA FACIE CASE.—The filing of a motion to reopen under this subparagraph shall only stay the removal of a qualified alien (as defined in section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B))[)] pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

"(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens who are physically present in the United States and who—

"(i) are, or were, in deportation or exclusion proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and

"(ii) have become eligible to apply for relief described in subparagraph (A)(i) as a result of the amendments made by—

"(I) subtitle G [§40701 et seq.] of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.) [see Tables for classification]; or

"(II) this title [see Short Title of 2000 Amendment note set out under section 1101 of this title]."

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1229b. Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of any aggravated felony.

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents

(1) In general

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien—

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(2) Special rule for battered spouse or child

(A) Authority

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

(i)(I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);

(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent

COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS APPEALS COURT

DOCKET NO. 15-P-1637

COMMONWEALTH

v.

CHRIST O. LYS, APPELLANT

APPEAL OF DENIAL OF MOTION FOR NEW TRIAL BY THE MARLBOROUGH DISTRICT COURT

APPENDIX OF APPELLANT

Hillary S. Cheng, Esq.
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Table of Contents

CRIMINAL DOCKET

DOCKET NUMBER	NO. OF COUNTS	Trial Court of Massachusetts District Court Department
1221CR000091	28	

DEFENDANT NAME AND ADDRESS	DOB	GENDER	COURT NAME & ADDRESS
Christ O Lys 27 Lexington Street Waltham, MA 02451	01/11/1992	Male	Marlborough District Court 45 Williams Street Marlborough, MA 01752
	DATE COMPLAINT ISSUED 01/13/2012		
	PRECOMPLAINT ARREST DATE		INTERPRETER REQUIRED

FIRST FIVE OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/32C/A	DRUG, DISTRIBUTE CLASS D c94C §32C(a)	10/03/2011
2	94C/32C/A	DRUG, DISTRIBUTE CLASS D c94C §32C(a)	11/22/2011
3	94C/32C/A	DRUG, DISTRIBUTE CLASS D c94C §32C(a)	11/28/2011
4	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	11/22/2011
5	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	11/28/2011

DEFENSE ATTORNEY	OFFENSE CITY/TOWN	POLICE DEPARTMENT
HOA Hook Daley BBO	Marlborough	Marlboro PD

DATE & JUDGE	DOCKET ENTRY	DATE & JUDGE	FEES IMPOSED
1-19-12 Sinapi	☑ Attorney appointed (SJC R. 3:10) ☐ Atty denied & Dott. Advised per 211 D §2A ☐ Waiver of Counsel found after colloquy	1-19-12 Sinapi	Counsel Fee (211D §2A¶2) $ 150 ☑ WAIVED Counsel Contribution (211D § 2) $ ☐ WAIVED
	Terms of release set: ☐ PR ☑ Bail 2,500 ☐ See Docket for special condition ☐ Held (276 §58A)		Default Warrant Fee (276 § 30¶1) $ ☐ WAIVED Default Warrant Arrest Fee (276 § 30¶2) $ ☐ WAIVED
	Arraigned and advised: ☐ Potential of bail revocation (276 §58) ☐ Right to bail to review (276 §58) ☐ Right to drug exam (111E § 10)	10-30-12	Probation Supervision Fee (276 § 87A) $ 65 ☐ WAIVED Bail Order Forfeited
10-30-12 T Harbison	Advised of right to jury trial: ☑ Waiver of jury found after colloquy ☐ Does not waive	1-19-12 Sinapi	Motion of Forfeiture Filed
	Advised of trial rights as pro se (Dist. Ct. Supp.R.4)		
	Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)		

SCHEDULING HISTORY

NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/ STOP
1	1-19-12	WR	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
2	1-19-12	ARR	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
3	2-2-12	RSK	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
4	3-9-12	PTH	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd	Hodgens	
5	4-17-12	CPC	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
6	5-14-12	DCE	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd	Singer	
7	7-20-12	DCE	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
8	8-23-12	DCE	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd	Singer	
9	10-9-12	DCE	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd	Hecht	
10	10-23-12	PRO	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		

APPROVED ABBREVIATIONS

ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.

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Paul T. Mitchell
CLERK-MAGISTRATE

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Christ O Lys	DOCKET NUMBER 1221CR000091

DATE	DOCKET ENTRIES
10-22-12	D/F Cont To Oct 30 2012 For [illegible] At Request of Defendant [illegible] [illegible]
10/31/12	Bail returned to surety V#2524 $1,000.—
"	" " " " V#2525 $1500.—
11/2/12	DEFT'S MOTION TO REVISE & REVOKE FILED
12-5-12	D/F R.O. Surety Withdrawn
"	Warrant to [illegible] Issued [illegible]
3/14/14	Copies mailed to Judge Harbour for his review
4-15-14	[illegible] Mike [illegible] App. on order.
"	Cont To May 13 2014 For
"	[illegible] Habe To Iss
"	To Suffolk County H/C Out
	HABE ISS. (KM) - SA RE: JUDGE HARBOUR
5-13-14	7-1-14 Motion/[illegible] to Issue Suffolk HOC — Judge Harbour specially assigned
7-1-14	HABE For Today Issued
"	Held by Immigration [illegible]
"	[illegible] [illegible] J. Fabbri
"	New Habe To Iss [illegible]
"	Suffolk H/C [illegible]
7-1-14	Habe issued to Suffolk H/C. Ret 7-14-14.
7-14-14	No action taken. J. Fabbri
8/20/14	HABE ISSUED TO MIDDLESEX; SUFFOLK & ICE (KM)
8-20-14	Re Issued HABES Judge Fabbri orders
"	ICE To Make Arraignment For Defendant [illegible]

APPROVED ABBREVIATIONS
ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review
SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate
DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing

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Cont To 9-29-14

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CLERK-MAGISTRATE

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Christ O Lys	DOCKET NUMBER 1221CR000091

DATE	DOCKET ENTRIES
9-3-14	WRAM to TSI Held to 9-29-14 for follow.
9-29-14	Cont'd to 10-28-14 SRE Judge Harbour to act on D's motion
" "	Def brought in by Sheriff
11-18-14	BW by Poulos WRAM to be issued
12-10-14	Habe issued to Suffolk H/C. Ret 1:30-15.
1-30-15	D not appearing no action taken - Harbour
4-28-15	Appearance filed by Attorney Hillary S. Chang, Esq.
5-1-15	Motion Filed by Atty Hillary Chang for Motion Allowed to withdraw as Counsel to May 21 2015 for Status / Kelley
5-21-15	Cont'd to 6-8-15 MOT - Judge Harbour Special Assigned Habe to issue to ICE Burlington, Massachusetts Enforcement Fax 781-359-7629
5/19/15	DEFT'S SUPPLEMENTAL MOTION FOR NEW TRIAL FILED
5/1/15	DEFT'S MOTIONS FILED
6-8-15	ALL Parties Present Motion For NEW Trial Taken under Advisement Judge Harbour
6/15/15	MOTION FOR NEW TRIAL DENIED. HARBOUR, R
	ALL PARTIES NOTIFIED
6/30/15	DEFT'S NOTICE OF APPEAL FILED
9-14-15	Motion For Funds Allowed Cp $ 500
10/1/15	TRANSCRIPT COMPLETED DT-1-6
1/8/16	ALL PARTIES NOTIFIED THE RECORD IS FULLY ASSEMBLED

APPROVED ABBREVIATIONS
ARR = Arraignment PT = Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR = Status review
SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate
DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing

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CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE 1: DRUG, DISTRIBUTE CLASS D c94C §32C(a)

DISPOSITION DATE AND JUDGE: Oct 30 2012 Harbour

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

18 months H/C committed 52 days Credit For Time Served while Held On Bail

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE 2: DRUG, DISTRIBUTE CLASS D c94C §32C(a)

DISPOSITION DATE AND JUDGE: Oct 30 2012 Harbour

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

18 months H/C concurrent with Count I

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE 3: DRUG, DISTRIBUTE CLASS D c94C §32C(a)

DISPOSITION DATE AND JUDGE: Oct 30 2012 Harbour

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

18 months H/C concurrent with Count I

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

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CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE
4 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

DISPOSITION DATE AND JUDGE: Oct 30 2012 Haberek

DISPOSITION METHOD
- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☑ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
5 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

DISPOSITION DATE AND JUDGE: Oct 30 2012 Haberek

DISPOSITION METHOD
- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☑ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
6 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

DISPOSITION DATE AND JUDGE: Oct 30 2012 Haberek

DISPOSITION METHOD
- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☑ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☑ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☑ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

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Paul F. Malloy
CLERK-MAGISTRATE

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE 7 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hadley

DISPOSITION METHOD

☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
☐ Bench
☐ [illegible]:
☐ Request of Commonwealth ☐ Request of Victim
☐ Request of Defendant ☐ Failure to prosecute
☐ Other:
☐ Filed with Defendant's consent
☐ Nolle Prosequi
☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION

☐ Sufficient facts found but continued without a finding until:
☐ Defendant placed on probation until:
☐ Risk/Need or OUI ☐ Administrative Supervision
☐ Defendant placed on pretrial probation (276 §87) until:
☐ To be dismissed if court costs / restitution paid by:

FINDING

☐ Guilty ☐ Not Guilty
☐ Responsible ☐ Not Responsible
☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE

☐ Dismissed on recommendation of Probation Dept.
☐ Probation terminated: defendant discharged
☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE 8 DRUG, POSSESS CLASS B c94C §34

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hadley

DISPOSITION METHOD

☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
☐ Bench Trial
☐ Jury Trial
☐ Dismissed upon:
☐ Request of Commonwealth ☐ Request of Victim
☐ Request of Defendant ☐ Failure to prosecute
☐ Other:
☐ Filed with Defendant's consent
☐ Nolle Prosequi
☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION

☐ Sufficient facts found but continued without a finding until:
☐ Defendant placed on probation until:
☐ Risk/Need or OUI ☐ Administrative Supervision
☐ Defendant placed on pretrial probation (276 §87) until:
☐ To be dismissed if court costs / restitution paid by:

FINDING

☐ Guilty ☐ Not Guilty
☐ Responsible ☐ Not Responsible
☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE

☐ Dismissed on recommendation of Probation Dept.
☐ Probation terminated: defendant discharged
☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE 9 DRUG, POSSESS CLASS B c94C §34

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hadley

DISPOSITION METHOD

☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
☐ Bench Trial
☐ Jury Trial
☐ Dismissed upon:
☐ Request of Commonwealth ☐ Request of Victim
☐ Request of Defendant ☐ Failure to prosecute
Other:
☐ Filed with Defendant's consent
☐ Nolle Prosequi
☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION

☐ Sufficient facts found but continued without a finding until:
☐ Defendant placed on probation until:
☐ Risk/Need or OUI ☐ Administrative Supervision
☐ Defendant placed on pretrial probation (276 §87) until:
☐ To be dismissed if court costs / restitution paid by:

FINDING

☐ Guilty ☐ Not Guilty
☐ Responsible ☐ Not Responsible
☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE

☐ Dismissed on recommendation of Probation Dept.
☐ Probation terminated: defendant discharged
☐ Sentence or disposition revoked (see cont'd page)

Date/Time Printed: 01-13-2012 13:12:03

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Paul T. Malloy
CLERK-MAGISTRATE

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys 10-30-12

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE
10 COCAINE, DISTRIBUTE c94C §32A(c) Attempt to Distribute c94C §32A(c)

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hardwicke

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ *Filed with Defendant's consent*
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until: 18 months HTC Concurrent
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by: With Count I

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
11 COCAINE, DISTRIBUTE c94C §32A(c) Attempt to Distribute c94C §32A(c) 10-30-12

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hardwicke

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ *Nolle Prosequi*
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until: 18 months HTC Concurrent
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by: With Count I

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ *Sentence or disposition revoked (see cont'd page)*

COUNT / OFFENSE
12 CONSPIRACY c274 §7

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hardwicke

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ *Probable Cause* ☐ *No Probable Cause*

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

Date/Time Printed: 01-13-2012 13:12:03

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CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE
13 CONSPIRACY c274 §7

DISPOSITION DATE AND JUDGE: Oct 30 2012 Haberman

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
14 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Haberman

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
15 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Haberman

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

Date/Time Printed: 01-13-2012 13:12:38

1221CR000091

Version: 2.0 - 11/06

A TRUE COPY, ATTEST
Paul F. Mahoney
CLERK-MAGISTRATE

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE
16 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2014 Horbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V.W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
17 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2014 Horbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V.W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**
		50		

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

No use of drugs Random Screens

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
18 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2014 Horbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V.W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

Date/Time Printed: 01-13-2012 13:12:36

1221CR000091

A TRUE COPY, ATTEST
Paul F. Malley
CLERK-MAGISTRATE

Version 2.0 - 11/01

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE
19 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Herbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
20 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Herbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
21 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Herbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

Date/Time Printed: 01-13-2012 13:13:31

1221CR000091

A TRUE COPY, ATT
Paul F. Mully
CLERK-MAGISTRATE

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE 22 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Herbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE 23 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Herbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE 24 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Herbert

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

Date/Time Printed: 01-13-2012 13:13:31

1221CR000091

A TRUE COPY, ATTEST:
Paul F. Malloy
CLERK-MAGISTRATE

Version 7.0 - 11-08

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE
25 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hinkle

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated; defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
26 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hinkle

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated; defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE
27 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 Hinkle

DISPOSITION METHOD
- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☑ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated; defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

Date/Time Printed: 01-13-2012 15:14:24

1221CR000091

A TRUE COPY ATTEST
Paul F. Mulry
CLERK-MAGISTRATE

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: Christ O Lys

DOCKET NUMBER: 1221CR000091

COUNT / OFFENSE: 28 ATTEMPT TO COMMIT CRIME c274 §6

DISPOSITION DATE AND JUDGE: Oct 30 2012 T Herbert

DISPOSITION METHOD

- ☑ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:
- ☑ Defendant placed on probation until: 10-30-2014
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING

- ☑ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE

- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE:

DISPOSITION DATE AND JUDGE:

DISPOSITION METHOD

- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING

- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE

- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE:

DISPOSITION DATE AND JUDGE:

DISPOSITION METHOD

- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING

- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE

- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

Date/Time Printed: 01-13-2012 13:14:24

1221CR000091

A TRUE COPY, ATTEST
CLERK-MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SUFFOLK, ss.

Marlborough District COURT
DOCKET NO. 1221CR0091

COMMONWEALTH

v.

Lys, Christ

4/8/14
Please set up for a hall
hearing as soon as possible.
Moreland J.

MOTION FOR A NEW TRIAL

NOW COMES the defendant, Christ Lys, pro se, pursuant to Mass.R.Crim.P Rule 30(b) who respectfully moves for a new trial.

In Support of this motion defendant states that when originally sentenced on the above captioned matter, he understood his plea agreement to call for 18 months in the house of correction; prior to Release to serve 3 years probation, with payments of 65$ a month Restitution till 10,30,2014. . Instead, defendant actually got 18 months Served But was detained By ICE on 11-05-13 Due to lack of advisement by counsel. .The defendant further states he did not have adequate representation by counsel. The sentence now being served therefore represents an injustice.

A SUPPORTING AFFIDAVIT is also enclosed.

WHEREFORE, defendant requests that the Court grant him a new trial.

Respectfully submitted,

Date: 2-19-14

Christ Lys
(Signature)

Christ Lys
(Printed Name)
Booking No. 1204982
Suffolk County House of Correction
20 Bradston Street
Boston, MA 02118

MAR - 3 2014

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SUFFOLK, ss.

Marlborough District COURT
DOCKET NO. 1221CR00091

COMMONWEALTH)
)
v.)
)
Lys, Christ)

CERTIFICATE OF SERVICE

I, Christ Lys, have caused a copy of the enclosed Motion for New Trial (With Supporting Affidavit), Motion for Appointment of Counsel, and Motion for Habeas Corpus to be served upon the Office of District Attorney, 45 William St, Marlborough District court, 01752, by 1st class mail, postage pre-paid, on the date stated below..

Date: 2-28-14

Christ Lys
(Signature)

Christ Lys
(Printed Name)
Booking No. 1304952
Suffolk County House of Correction
20 Bradston Street
Boston, MA 02118

MAR - 3 2014

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SUFFOLK, ss. Marlborough District COURT

DOCKET NO. 1221CR0091

COMMONWEALTH

v.

Lys, Christ

DEFENDANT'S AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR A NEW TRIAL

I, Christ Lys, hereby depose and state that the following is true to the best of my knowledge:

I Mr. Lys hereby Request that this Honorable Court Grant a motion to vacate plea and Judgement. Mr. Lys Contends He was not properly advised By plea counsel about the immigration Consequences of his plea, Nor properly understood the consequences of his plea Nor properly understood the consequences of the Crime He was accepting at the time of his plea deal. Mr. Lys ask this Honorable Court to take these Reasons into consideration when evaluating whether or not his plea was knowingly, voluntarily and willingly made and in accordance with constitutional Due process. on October 20th 2011 Mr. Lys pled Guilty to Distributing A class D Substance (3 counts), (4 counts) of a Controled Substance (N.P) in a School Zone, Distributing Class B Substance, (2 counts) of conspiracy, and (15 counts) of attempting to commit a Crime. I pled Guilty to 18 months in the House of correction in Billerica, with 2 years Probation upon Release. Because of this plea Mr. Lys Stands to Suffer from the enumerated immigration on Related consequences Set forth. Namely, Mr. Lys is Suffering from Vitually mandatory Deportation, the inability to Renew his lawful permanent Residency and Permanent exclusion from the United State. Mr. Lys further Contends that had he properly Been advised of the mandatory immigration Consequences of his Criminal Disposition By plea Counsel, He would Not have pled and would have instead

MAR - 3 2014

Argued alternatives, such as proceeding to trial. The tremendous inequities at State in his case buttress Mr. Lys's contention that he would not have pled Guilty had he been properly advised of the immigration consequences of his plea by Counsel. When taking this plea he did so upon the Misadvice of former Counsel, whome the Defendent contends did not warn Mr. Lys that pleading Guilty to Distributing A class D and class B substance offense would suffer automatic and mandatory detrimental immigration Consequences, including permanent Deportation. Mr. Lys was never Consulted of any immigration consequences by his counsel. Mr. Lys went in front of a Judge several times and within those times Mr. Lys was seen inefficient of times By his counsel. Attorney Dailey E. Cornelius" Never advised the deffendant about any immigration Consequences when a plea Deal for Distributing a class D and class B substance in a School Zone. Mr. Lys Served 1 year out of his 18 month sentence and on November 8th 2013 the united states Department of Homeland Security working with Immigration Customs enforcement (ICE) detained Mr. Lys and issued him an I-862 Notice to Appear Stating that Due to the conviction at issue in this Motion, Mr. Lys contends that had he been aware of his plea and the Consequences He would have taken advantage of his right to a Jury trial.
Thank you for your time.

SIGNED AND SWORN TO under the pains and penalties of perjury this 28 day of

February, 2014.

Christ Lys
(Signature)
Christ Lys, pro se
(Printed Name)
Booking No. 1304982
Suffolk County House of Correction
20 Bradston Street
Boston, MA 02118

MAR - 3 2014

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

MARLBOROUGH DISTRICT COURT
DOCKET NO.: 1221CR000091

COMMONWEALTH

v.

CHRIST LYS

2015 MAY 19 PM 4:20

DEFENDANT'S SUPPLEMENTAL MOTION FOR NEW TRIAL

Now comes Defendant Christ Lys, by and through undersigned counsel, and moves this Honorable Court to vacate his plea and order a new trial. In support of his supplemental motion, Defendant states as follows:

1. On October 30, 2012, Defendant entered a guilty plea on Docket No. 1221CR000091.
2. On May 19, 2014, the Supreme Judicial Court held in *Commonwealth v. DeJesus*, 468 Mass. 174 (2014), that defense attorneys must be very clear when explaining the potential consequences of a guilty plea and telling immigrants they could be "eligible for deportation" is not sufficient where deportation is a virtual certainty.
3. Defendant's then-attorney did not explain any immigration consequences attached to his guilty plea entered on October 30, 2012, nor did he tell Defendant that deportation was a virtual certainty because DHS considered such a conviction an aggravated felony requiring automatic deportation and a violation of the Controlled Substances Act that also makes an immigrant removable.

WHEREFORE, Defendant respectfully requests that this Honorable Court:

1. Vacate Defendant's guilty plea entered on October 30, 2012;

2. Order a new trial for the Defendant; and

3. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Hillary S. Cheng, Esq.
BBO# 692297
Law Office of Hillary S. Cheng
7 Federal Hill Road
Nashua NH 03062
T: 603-546-8452
F: 978-616-7349
hillary@hillarylawoffice.com

Dated: May 19, 2015

Certificate of Service

I, Hillary S. Cheng, hereby certify that I have served copies of the foregoing motion and any attached pages on the Commonwealth, by hand, on May 19, 2015.

Signed under the pains and penalties of perjury,

Hillary S. Cheng

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS DOCKET NO. 1221 CR 0091

Marlborough District Court

hillarv@hillaryLawoffice.com

Commonwealth

v.

Christ Lys

SUPPLEMENTAL AFFIDAVIT

I, Christ Lys, being duly sworn, state and depose the following:

1. I am the defendant in the above-entitled case. I am submitting this affidavit as a supplement to my affidavit on record in support of my Motion for New Trial.

2. I am currently in the custody of the Department of Homeland Security (DHS) after being placed in deportation proceedings following my plea in the instant case on October 30, 2012. I have also been ordered deported by an immigration judge and my appeal to reverse the deportation was also denied. I now face imminent deportation.

3. I am requesting the Honorable Court to vacate my plea and order a new trial because I was not aware that my plea would have deportation consequences. My defense attorney, Cornelius Dailey, had not advised me that my plea would lead to my deportation. Indeed, my plea had automatic deportation consequences. Furthermore, I would be barred from entering the United States for ever because my plea has a permanent bar to my admission in the United States.

4. If my attorney had advised me that my plea would lead to automatic deportation, I would not have accepted to plead out the way I did. I did not have all the relevant information to allow me to make an informed decision. If I had known that I would be automatically deported, I would have opted to exercise the options that I had to avoid deportation or reduce the consequences of deportation. I would have requested to negotiate a plea deal that would not have deportation consequences. I would also have requested to negotiate a plea that would reduce the consequences of deportation by affording me an opportunity to file for relief from deportation in immigration court. My plea had a complete bar to any application for relief in immigration court despite my lengthy duration of residence in the United States. Furthermore, I would have requested my defense attorney to file pre-trial motions that may have lead to dismissal of the charges or amendment of charges to lesser charges with no or limited immigration consequences. And lastly, I would have

exercised my right to a jury trial to fight for my case in court. There is a chance that I may not have been found guilty.

5. I would not have accepted a plea that would result to my automatic deportation or bar me from seeking any relief from deportation court. I came to the United States from Haiti legally as a permanent resident when I was almost eight (8) years old. I have no other place I consider home other than the United States. I went to schools in the United States, I speak American English, I have a community of friends and desire to make a life in the United States. I only have a limited command of Haitian Creole language and cannot speak French well. I have no close family in Haiti. My only close family members, my mother and a younger brother, disappeared during the earthquake that devastated Haiti a few years ago. Deportation for me would all but mean death to me in Haiti. Given the severe consequences of my deportation, I would have tried as much as I could to avoid a plea that would lead to my deportation.

6. I have gone through a lot and know that the only place for me to get help is in the United States. I was also diagnosed with delayed developmental disorder or learning disability when I was young. Last week, I was diagnosed with Post-Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD), and I have requested written documentation of this diagnosis. I was also sexually abused by a family member when I was young and was forced to keep quiet about it for a long time, and I suffered physical abuse at the hands of my father who often beat me when he was drunk or upset. After living in foster homes from the time I was 14 until I was 17, I returned home to rekindle my relationship with my father, but he called the police on me when I was 18 to throw me out of the only home I had. My deportation to Haiti would only worsen things for me. There are only substandard medical facilities there which are ill-equipped to deal with my medical situation. With so much at stake in my life, I would have fought my criminal case to avoid deportation.

7. I am requesting that the Court grant my motion and give me a chance to have a new trial. I want to come to court and testify in support of my motion for new trial. However, DHS, ICE, and the Sheriff of Suffolk County have not been cooperative to bring me to court. I fear that the delay only makes my deportation more imminent as there is nothing else that stands in the way for my deportation.

8. If the Honorable Court grants my motion for new trial, my deportation order would be vacated, and I would be released from detention to come to court for the new trial of my case. I am thus begging your Honorable Judge to grant my motion.

Signed under the pains and penalties of perjury this 19th day of May 2015.

Christ Lys

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

On this 19th day of May before me, the undersigned notary public, personally appeared Christ Lys and proved to me through satisfactory evidence of identification, to be the person whose name is signed on the foregoing Affidavit, and acknowledged to me that he has signed the affidavit voluntarily and on his own will for its stated purpose.

Notary Public

LAWRENCE GATEI
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
January 20, 2017

15-P-1637

COMMONWEALTH OF MASSACHUSETTS
DISTRICT COURT TRIAL DIVISION OF THE COMMONWEALTH

MIDDLESEX, SS

MARLBOROUGH DISTRICT COURT
DOCKET NO: 1221CR0091

COMMONWEALTH OF MASSACHUSETTS

V.

CHRIST LYS

DECISION ON DEFENDANT CHRIST LYS
MOTION FOR A NEW TRIAL

This Motion was finally heard at the Marlborough District on June 8, 2015. The Motion had been scheduled to be heard a number of times previously but the Defendant was never transported to the Marlborough District Court for reasons unknown to this Jurist. The Defendant was represented by Attorney Hillary S. Cheng and the Commonwealth was represented by Assistant District Attorney John Dawley. The original Motion was filed by The Defendant Christ Lys and it appears that Attorney Cheng adopted the arguments in his Memorandum and submitted a separate affidavit.

The Defendant and Attorney Cheng advance two critical legal issues for the Court to consider. First was Mr. Christ Lys advised by his court appointed Attorney Cornelius Daley of the practically inevitable negative effect his Guilty plea would have on his immigration status. Second, if the Court finds that his trial Attorney failed to properly advise and counsel Mr. Lys regarding the negative effect his Guilty plea would have on his immigration status, did Mr. Christ

Lys have an available substantial ground of defense that would have been pursued if he had been advised of the dire immigration consequences of his guilty plea, or that a reasonable probability that a different plea bargain absent such consequences could have negotiated at that time, or that the presence of special circumstances that support the conclusion he placed or would have placed particular emphasis on immigration consequences in deciding whether or not to plead Guilty.

First the Court must examine whether or not the Defendant was properly and completely advised of the dire consequences that his plea of Guilty would have on his immigration status and to that issue this Court is left with only the Affidavits by the Defendant Mr. Lys and Attorney Cheng. His Court appointed Attorney provided no Affidavit nor did he appear to offer any testimony or information on what transpired between he and Mr. Lys regarding the effect the plea of Guilty would have on his immigration status. Further the Supreme Judicial Court has previously declared that the standard warning that a trial Judge would give Mr. Lys during a plea colloquy was not sufficient to properly advise him of the potential severe consequences his Guilty plea on his immigration status. Faced with this paucity of factual information as to what Attorney Cornelius Daley may have advised the Defendant as to his immigration status the Court feels strongly that it must give the Defendant's and his Attorney's Affidavits full credit. The Court finds therefore that the Defendant was not properly advised of the dire consequences that his plea of Guilty would have on his immigration status and that his Court appointed Attorney's failure to so advise him fell below the objective standards of reasonableness required by an Attorney representing clients with these particular types of immigration issues.

Second the Court must then examine whether the Defendant has shown that he was prejudiced by his trial Attorney's errors in not properly advising him of the potential dire

consequences his plea would have on his immigration status. In order to do this the Defendant needed to demonstrate to the Court that he had available to him a substantial ground of defense that he would have pursued if he had been correctly advised of the dire immigration consequences of accepting the plea bargain. The Defendant did not do this either in his Memorandum nor during his Attorney's presentation to the Court. Further on the day that the Defendant entered his plea at the Marlborough District Court a very extensive presentation of the allegations against him were read into the record and the Defendant acknowledged that the allegations were true. The Defendant proffered in his Memorandum that a different plea bargain absent dire immigration consequences could have been negotiated at the time he entered his plea. The Commonwealth was adamant that the plea bargain that the Defendant was offered and accepted was the only offer that would ever have been made to him and no further breakdown of the charges would ever be considered. Finally despite the impassioned advocacy on his behalf by his Attorney regarding his history of abuse at the hands of his father and lack of family in his home Country the court does not find the presence of any special circumstances that would support the conclusion that he would have placed any more emphasis on the immigration consequences in deciding whether or not to enter the pleas that he did.

Therefore the Defendant's Motion for a new trial is denied.

June 12, 2015

Robert G. Harbour
Associate Justice District Court

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

MARLBOROUGH DISTRICT COURT
DOCKET NO.: 1221CR000091

COMMONWEALTH

v.

CHRIST LYS

DEFENDANT'S NOTICE OF APPEAL

NOTICE is hereby given that the Defendant in this case, being aggrieved by certain opinions, rulings, directions and judgments of the Court, hereby appeals his conviction pursuant to Massachusetts Rules of Appellate Procedure, Rule 3. Defendant in this case is appealing the denial of his Motion for New Trial by the District Court Judge Harbour on June 15, 2015. Exh. A "Memorandum of Court's Decision."

Respectfully submitted,

Hillary S. Cheng, Esq.
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hillary@hillarylawoffice.com

Dated: June 30, 2015

Certificate of Service

I, Hillary S. Cheng, hereby certify that I have served copies of the foregoing motion and any attached pages on the Commonwealth, by hand, on July 1, 2015.

Signed under the pains and penalties of perjury,

Hillary S. Cheng